

# *The Family Court of the State of Delaware*



ROBERT BURTON COONIN  
JUDGE

NEW CASTLE COUNTY COURTHOUSE  
500 N. KING STREET, STE 9400  
WILMINGTON, DELAWARE 19801-3732

December 21, 2016

Shawn Dougherty, Esq.

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## **LETTER, DECISION AND ORDER**

K--- L-----

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RE: T—B----- v. K--- L-----

File No.: CN06-02360; Petition No: 16-07530

### **Petition to Modify Custody**

Dear Counsel and Mr. L-----:

Before the Court is a Petition to Modify Custody and a Motion for Relocation (hereinafter collectively “Petition”) filed on March 11, 2016 by T—B----- (hereinafter “Mother”), represented by Shawn Doherty, Esq., against K--- L----- (hereinafter “Father”), self-represented, in the interest of their minor children, L----- B----- born -----, 2003, L--- B----- born ---- -, 2005, and W--- B----- born ---- -, 2008 (hereinafter “Children”). In her Petition, Mother requested the Court grant her permission to move with the Children to Michigan and requests that Father’s visitation with the Children be modified

accordingly.

### **PROCEDURAL HISTORY**

On April 24, 2013, Father filed a Petition for Custody of the parties' minor children, requesting joint legal custody and shared residency. On May 15, 2013, Mother filed an Answer and Counterclaim asserting that shared residency would not be in the Children's best interests. On June 25, 2015, the Court entered an Order finding it was in the Children's best interests that the parents have joint custody, with Mother having primary residential placement and final decision making. The Court ordered Father to have visitation with L--- and W--- every other weekend after school from Friday until Sunday evening. The parties agreed that pick-up occur at the Children's school. The parties also agreed to engage in co-parent counseling. Father was also entitled to two (2) non-consecutive weeks in the summer to go on vacation with the Children, and the parties split holidays. The Court also found that the family should engage in counseling, particularly L----- and Father, and that Father's visitation with L----- should be limited to a therapeutic setting. Mother was also to confer with Father before enrolling the Children in extracurricular activities and Father was to promptly respond to those messages.

On March 11, 2016, Mother filed a Petition to Modify Custody Order requesting that Father's visitation be reduced and a Motion for Relocation requesting to move with the Children to Michigan. In her Petition, Mother alleged that it was in the Children's best interests to move in order to be closer to family and that Father had failed to consistently visit the Children on his scheduled weekends. On March 22, 2016, Father filed a Response to Mother's Motion, requesting the Court deny her Motion to move to Michigan. On November 3, 2016, two weeks before trial, Father filed a Motion for Continuance on the basis of financial inability to obtain counsel, which the Court denied, finding that the trial had been scheduled since August of 2016

and that Father failed to serve Mother's counsel as required by Court rules. On November 16, 2016, the Court held a full hearing on the merits in which testimony was presented by Mother, Father, and M---- W-----.

### **DISCUSSION**

For the sake of judicial economy, the Court will not repeat in detail all of the testimony that can be obtained from the record, but will note the salient testimony as it pertains to the required statutory analysis. On June 25, 2015, the Court entered an Order on the custody and visitation of the Children. Since Mother's Petition for Custody Modification was filed less than two years after the issuance of an Order concerning custody, the Court would generally be bound by 13 *Del. C.* § 729(c)(1),<sup>1</sup> which states that a Court must not modify an order unless it finds that continuing enforcement of the prior order may "endanger the Child's physical health or significantly impair his or her emotional development." However, although Mother filed a Petition for Custody Modification, Mother, because she is already the primary custodial parent, is not seeking to alter the parties' custody of the Children at all; rather, she is merely seeking to alter Father's visitation schedule based on her Motion to Relocate. Accordingly, the Court need not make a finding based on 13 *Del. C.* § 729(c)(1). Therefore, in determining whether the Custody Order should be modified with regard to Father's visitation schedule, as well as in determining whether to grant Mother's Motion for Relocation, the Court must consider the best interests of Child by an analysis of the factors listed in 13 *Del. C.* § 722 as opposed to the higher standard set out in 13 *Del. C.* § 729(c)(1).

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<sup>1</sup> 13 *Del. C.* § 729(c)(1) provides:

(c) An order entered by the Court after a full hearing on the merits concerning the legal custody of a child or his or her primary residence may be modified only as follows:

(1) If the application for modification is filed within 2 years after the Court's most recent order concerning these matters, the Court shall not modify its prior order unless it finds, after a hearing, that continuing enforcement of the prior order may endanger the child's physical health or significantly impair his or her emotional development.

### **Best Interest Factors**

***(1) The wishes of the child's parents as to his or her custody and residential arrangements;***

The parties wishes as to their Children's residential arrangements are in opposition. Mother wishes to be granted permission to move to Michigan, as she feels this is in the Children's best interests. Mother stated that most of her family members live in Michigan and that she has a promising job opportunity there. Additionally, the cost of living is reduced in Michigan, which Mother stated was of significance because Father is currently in arrears of over \$24,000 in child support payments. Mother further stated that the Children did not have a relationship with their Father and accordingly it would not be detrimental to Father's and Children's relationship for the family to move out-of-state.

On the other hand, Father desires to be part of the Children's lives and feels the move out-of-state would further strain his relationship with his Children. Father stated that Mother had denied him visitation with the Children and that Mother had refused to engage in counseling with the Children and Father. However, the Court did not find Father's testimony on this factor persuasive. Although the Court's prior Order afforded Father visitation with the Children every other weekend beginning Friday after school, the record reflects that Father rarely engaged in visitation and never arrived to pick the Children up from school as allowed. Therefore, Court finds that Father had the opportunity to see his Children multiple times but has chosen not to do so.

Although the parties' wishes are in opposition, Father's desire to strengthen his relationship his relationship with the Children is not borne out by his actions. Father has failed to see his Children despite this Court's Order affording him visitation and has failed to provide

significant financial support for his Children's care. Accordingly, the Court finds that this factor favors granting Mother's Petition.

***(2) The wishes of the child as to his or her custodians and residential arrangements;***

Mother requested the Court conduct an interview with the Children. However, during the hearing, the Court heard testimony regarding the Children's anxiety around visitation with their Father and the custody issues of Mother and Father. Despite the Court's desires to make Child Interviews as pleasant as possible, it can nonetheless be a stressful experience for any Child, but particularly for Children who already have anxiety around their parent's custody and visitation issues. In this case, the Court found that conducting an interview with the Children may result in exacerbating their anxiety and could be detrimental to their emotional well-being. Accordingly, the Court chose not to conduct an interview with the Children, and therefore does not have first-hand knowledge of their wishes.

However, the Court found the Children's therapist's testimony persuasive regarding the Children's wishes as to whether they wished to move with their Mother to Michigan. Additionally, Mother provided uncontroverted testimony to corroborate Ms. W----'s statement that the Children desire to move to Michigan. Ms. W---- stated that the Children are excited about the possibility of going to Michigan and being closer to their maternal relatives. Ms. W---- noted that the Children visit Michigan in the summer and that those visits are always enjoyable for them. Accordingly, the record indicates that the Children desire to move to Michigan with their Mother. The record also reflects that Father and the Children continue to have a poor relationship that has been further strained since the Court's Order of June 2015 due to Father's failure to regularly visit the Children. Ms. W---- stated that the Children feel uncomfortable around their Father and that they are angry with his failure to be a consistent force in their lives.

Father and the Children do not have a relationship that would be significantly altered by their move out of state. Therefore, the Court finds this factor favors granting Mother's Petition.

***(3) The interaction and interrelationship of the child with his or her parents, grandparents, siblings, person cohabiting in the relationship of husband and wife with a parent of the child, any other residents of the household or person who may significantly affect the child's best interests;***

*A. Children's Relationship with Father*

The record reflects that the Children have a poor and minimal relationship with their Father. The Court heard testimony from Megan W----, who has been the Children's counselor for over three (3) years. Ms. W---- testified that she sees the Children each week to work on family issues involving Mother and the Children's contact with their Father. Ms. W---- testified that the Children had not had visitation with their Father for over a year, which was corroborated by Mother. Father himself noted that he stopped visitation after a situation that arose when he tried to visit the Children wherein the police were called in order to effectuate the visitation; claiming that he did not want that to happen again, Father has stopped visitation. Father also stated that Mother took the Children to Tennessee during the summer of 2015 and failed to notify him, which caused him to end his visitation. Father did not resume visitation in the fall of 2015 and failed to pick the Children up from school on any of his afforded weekends for visitation. Father also failed to notify in advance either Mother or the Children that he would not be coming to visit with the Children, leaving the Children to wait at school to be picked up, which never occurred. Father stated that he had only seen his Children a few times over the past year; Father did attend a pizza visit with the Children with Mother present in the summer of 2016 and attended L----'s soccer games on three (3) occasions in the fall of 2016. Father also briefly saw the Children last Christmas when he stopped by to drop off a present. This is the total of his visits with his Children of the course of an entire year. Father also stated that he had a few phone

calls with the Children in the past year.

Ms. W----, the Children's therapist, noted that the Children are angry, disappointed, and frustrated with their Father. Ms. W---- stated that L-----, the oldest Child, was confused when her Father abruptly ended his visitation in June of 2015 and is now angry with him. L--- and W-- -, the two (2) younger Children, have also expressed that they did not want to visit with their Father. Ms. W---- noted that the Children express a lack of trust in their Father and that they do not feel safe with him.

Ms. W---- testified that Mother has not impeded the Children's contact with their Father. The Children are aware that he calls and therefore consistently do not want to answer the telephone, nor do they visit their Father. Ms. W---- testified that the L---- had previously had several telephone conversations with her Father that she found upsetting. For example, in March of 2016, Father indicated to L---- that he blamed Mother for the Children's lack of visitation. In another example, L---- inquired whether Father was moving, since his house was then for sale; to which, Father told her that it was none of her business. Additionally, in November of 2015, L---- -- had a telephone conversation with her Father wherein Father told her about a child support hearing that L----- was not aware of; when she became upset, Father told L----- that Mother was lying and Mother was keeping her from him. Ms. W---- noted that each of these incidents were stressful for the Children and further strained Father's and Children's relationship.

Additionally, despite Court's directive in the prior Order that Father seek counseling with the Children, Father delayed contact with Ms. W---- until July of 2016, thirteen (13) months after the prior Order was entered. When asked by Ms. W---- why he waited so long, Father sought to shift the blame to his Children, stating that he was trying to "give the Children a break" since they did not wish to see him. Father noted that there had been some police involvement at one

point in trying to make the Children go to visitation with him, and so he felt that a break was necessary. Ms. W---- testified that she met with Father on July 25, 2016 in order to ascertain how Father's individual therapy was progressing and his current thinking process regarding his Children. Ms. W---- noted that Father exhibited anger issues in the past regarding his Children's lack of desire to visit him, and she stated that she was looking for Father to take responsibility for that anger and his own involvement in producing that lack of desire on the part of the Children. However, according to their counselor, Father continued to blame Mother for the lack of relationship between himself and his Children. Ms. W---- recommended that Father find a family therapist who could work with the Children and Father regarding those issues. Ms. W---- explained to Father that she was not a family therapist and could not provide that service to him and his Children, although she would be willing to work with a family therapist to provide insight into their case given her history with the family.

On September 26, 2016, Ms. W---- met with Father a second time to ascertain whether he had found a family therapist to work with him and the Children and to determine if there had been any progress regarding his relationship with the Children. Ms. W---- asked permission to speak with Father's individual therapist; however, Father refused to allow his therapist to speak with her regarding his progress. Ms. W---- also asked Father if he had found a family therapist who might be able to work with him and the Children regarding their relationship. In her testimony, Ms. W---- noted that she felt it was important to have a third party guide Father and the Children in the process of reunification. However, Father stated that he did not know a family therapist who accepted his insurance. Ms. W---- then gave Father information on two (2) family therapists that she did not know professionally but whose information she had found online.

Subsequently, Ms. W---- noted that Father had followed up on contacting a family



therapist. However, Ms. W---- noted that this therapist, Dr. N-----, recommended that all five (5) members of the family—Mother, Father, and Children—come in together for the first visit. Ms. W---- testified that she believed that this procedure would be detrimental to the reunification process and that she strongly felt the family therapist should meet with the parents and Children individually first to ascertain the issues in the case before bringing the family in together. Ms. W---- wrote a letter to Dr. N----- explaining her concerns and her history with the family (Petitioner's Exhibit #1). Mother testified that she shared Ms. W----'s concerns about Dr. N-----'s methods and requested that Father find an alternate family therapist to work with the Children.

During the hearing, Father testified that he had wanted to begin reunification therapy with his eldest daughter with Ms. W---- facilitating; however, Ms. W---- stated that she was not a family therapist and that she could not provide reunification facilitation for the Children and Father. Accepting the role of reunification therapist could jeopardize her relationship as the personal therapist for the Children. She testified that although she had agreed to meet with Father and L---- for a session, she wanted to have a family therapist lined up for reunification to begin after that session, rather than merely have that single session.

Mother stated that although the family was originally going to undergo counseling with Blaine Morris, Father currently owes Blaine Morris \$250. Father disputed Mother's allegation and stated that Mother refused to engage in therapy at Blaine Morris. The Court found Mother's testimony more persuasive on this point.

At the time of the hearing, both Mother and Father have failed to find a therapist who is able to work with the family on the Children's reunification with Father. Therefore, the family has made no progress on reunification since the Court's prior Order and the relationship between Children and Father has been further weakened. Although the Court faults both Mother and

Father for this delay, the burden was nonetheless on Father to initiate the reunification process. Father did not contact Ms. W---- to discuss reunification until over a year after the Court's Order directing the parties to engage in family therapy. The Court also finds that Mother may validly object to a therapist's methodology without unduly inhibiting the therapeutic process. Father and Mother should strive to find a mutually agreed upon therapist to work towards reunification as soon as possible.

The Court finds that Father's relationship with his Children is poor, in part due to his failure to exercise visitation with the Children or promptly engage in therapy with the family. Although Father testified that Mother keeps the Children from Father, the Court found this unpersuasive. The parties clearly have difficulties communicating with each other, and Mother is not entirely without fault in the breakdown of Father's and Children's relationship. However, the record reflects that Mother afforded visitation with Father on numerous occasions which Father failed to effectuate. The record also reflects that Mother notified Father as to when the Children would be out of town and attempted to afford him visitation at another time without success. Accordingly, the Court finds that the lack of visitation between the Children and Father is not due to Mother "keeping the children from" Father, but rather Father's failure own to consistently visit the Children.

#### *B. Children's Relationship with Mother*

On the other hand, the record reflects that Children's relationship with their Mother is strong. Mother testified that she is the Children's sole caregiver and ensures that all their needs are met. Mother takes the Children to all their doctor's appointments, to extracurricular activities, and manages their school schedules. There were no concerns noted in the record as to Mother's and Children's relationship. Accordingly, the Court finds that the Children have a strong

relationship with their Mother.

*C. Children's Relationship with Others who May Affect their Best Interests*

Neither Mother nor Father have relatives who live in Delaware whose relationship with the Children may be affected by the move to Delaware. Father's mother lives in Virginia. Mother stated that she took the Children to visit their paternal grandmother on their way home from a vacation in Tennessee in the summer of 2015, a visit Mother initiated. Although Father was aware of the plan, Father chose not to be present for this visit in Virginia. Mother also stated that the Children saw their paternal grandmother in September of 2016 when Father requested a visit since his mother was in town; at that time, Mother took L--- and W--- to the park for a one and a half (1½) hour visit. There has been no contact between the Children and their paternal grandmother except these two (2) occasions in the past year and a half. Mother stated that all of her relatives live in Michigan.

Accordingly, the Court finds that the Children have a good relationship with their Mother and a poor relationship with their Father. There are no additional relatives who live in Delaware whereby the Children would be harmed by the move to Michigan. Therefore, this factor favors granting Mother's Petition.

***(4) The child's adjustment to his or her home, school and community;***

The Court finds that the Children are well adjusted to their home, school, and community in Delaware. Mother stated that L----- attends DuPont Middle School and L---- and W--- attend Odyssey Charter School. All three (3) of the children are doing well in school. Mother stated that because L----- is vision and hearing impaired, she has an Individualized Education Plan (IEP) and a "great team" at her school. L---- has an IEP for speech. Mother stated that Father has not attended an IEP meeting for the Children, but did attend a school meeting for W---.

On the other hand, the Children are not at all adjusted to Father's home. The record reflects that the Children have not visited Father in his home for more than a year. Father testified that he would be moving to a new home soon within the state of Delaware and that his current home is listed for a short sale due to his defaulted mortgage.

Mother stated that the Children would like to move to Michigan to be closer to Mother's relatives. The Children visit Mother's relatives in Michigan in the summer and greatly enjoy their visits. Ms. W---, the Children's therapist, also stated that after the summer visits, the Children appear happier and more relaxed. Mother lacks a strong support network in Delaware and she and the Children would benefit from having the social support of family in Michigan.

Mother also testified as to the Children's ability to adjust to the community in Michigan. Mother stated that she would like to move to the town of Okemus in Michigan, which is close to Mother's relatives. Mother stated that the schools in Okemus are some of the top rated in that state. Mother noted that should the Court grant Mother's request to relocate, L----- would attend Okemus High School (OHS), L---- would attend Chippewa Middle School, and W--- would attend Bennett Woods Elementary School. Mother has also investigated engaging the Children in counseling, since after the move they could no longer receive therapeutic services from Ms. W---. Mother stated that OHS has a high school counselor, and Mother may also engage the Children in therapy with East Side Counseling at Sparrow Hospital in Okemus. Mother has been proactive in investigating the educational and therapeutic services the Children would require if relocation is allowed.

Mother testified as to the emotional benefits afforded to the Children should the Court grant her permission to move. Mother stated that she has a large family, most of whom live close to Okemus. The Children's maternal grandmother, aunts, uncles, and seventeen (17) cousins live

within a thirty (30) to forty (40) minute range from Okemus. On the other hand, Mother has no relatives in Delaware who are able to provide significant social support. Accordingly, the Court finds that the Children's social support network would greatly expand by a move to Michigan.

Mother's financial position would improve with a move to Michigan. Mother is employed as an occupational therapist and has an Associate's Degree in occupational therapy. Mother has investigated the availability of job opportunities within her field in Michigan that and believes there are many more than are available in Delaware. Additionally, Mother stated the cost of living in Michigan is approximately 18-20% less than in Delaware and the housing is approximately 50% less, while her income would likely be equal to better than her current income. These financial benefits to Mother and Children are significant due to Father's failure to timely pay his child support payments in full and his significant arrears.

The Court finds that although the Children are well adjusted to their school and community in Delaware, it would be in their best interests to benefit from being closer to Mother's family in Michigan. The record reflects that the Children have a strong relationship to their maternal relatives and that they enjoy visiting with them. Additionally, Mother has carefully researched the schools and community where she would move in order to determine the best fit for her Children. Finally, Mother's job prospects and the lower cost of living that would be afforded by relocating to Michigan are significant due to Father's significant arrears in child support payments. Accordingly, the Court finds that this factor granting Mother's Petition.

***(5) The mental and physical health of all individuals involved;***

Mother noted that she was physically healthy; however, she suffered ongoing stress and anxiety due to the issues between Mother, Father, and the Children. Nonetheless, the record reflects that the Children are doing well in Mother's care and that all their needs are met.

Therefore, the Court finds that Mother's stress levels do not inhibit her ability to appropriately care for her Children. However, the Children may benefit from extended social support to relieve Mother's stress levels, which would come with a move to Michigan.

Father also noted that he was physically healthy. He stated that he had been in counseling since June of this year. Father noted that although he had been engaged in counseling prior to this year, he went for a year without therapy due to lack of insurance. He stated that he was not currently prescribed any medication. He believes he would benefit from continuing his therapeutic treatment.

Ms. W---- testified as to the effect of Father's and Children's relationship on the Children's mental health. She stated that L----- feels rejected by her Father and suffers significant self-esteem issues. Ms. W---- noted that L----- "took things internally," especially if conversations between her and her Father were negative. Ms. W---- also noted that W--- and L---- suffer due to the poor relationship between them and their Father and that this is detrimental to their emotional well-being.

Mother stated that all the Children are healthy and have no medical concerns. However, L---- -- is vision and hearing impaired and attends occupational therapy to address these issues.

The Court finds that this factor favors granting Mother's Petition. The Children's emotional wellbeing would benefit from having a stronger support network that would come with a move to Michigan.

***(6) Past and present compliance by both parents with their rights and responsibilities to the child under §701 of this title;***

Pursuant to 13 Del. C. § 701, parents are responsible for the support, care, nurture, welfare, and education of their child. The record reflects that although Mother has complied in full with her responsibilities as a parent, Father has failed to adequately comply with his duties as

a parent. Mother has been the sole caregiver of the Children for over a year. She manages the Children's education, medical needs, and the daily responsibilities of parenting.

On the other hand, Father has not complied with his responsibilities as a parent. Father is currently employed at Sears as a Sales Project Manager with an approximate annual income of \$23,000. Although Mother noted that Father makes small payments towards his child support, Father is currently in arrears of over \$24,000 in child support payments. Additionally, although the Court afforded Father visitation every other weekend during the school year, Father failed to engage in these visits. Since Father was to pick the Children up after school, the Court finds that Mother did not hinder Father's ability to see the Children on these weekend visits, but rather the fault lies totally with Father. Although Father has attended some of the Children's extracurricular activities and school functions, his attendance has been sporadic at best.

Accordingly, the Court finds that this factor favors granting Mother's Petition.

***(7) Evidence of domestic violence as provided for in Chapter 7A of this title; and***

Pursuant to 13 *Del. C.* § 706A(a), any evidence of a past or present act of domestic violence, whether or not committed in the presence of the child, is a relevant factor that must be considered by the Court in determining the visitation arrangements for the child in accordance with the best interests of Children. Domestic violence is defined by 13 *Del. C.* § 703A(a), as including, but not limited to, physical or sexual abuse or threats of physical or sexual abuse and any other offense against the person.

Mother testified that although Father was not physically abusive, he could be emotionally and verbally abusive. However, there was not enough evidence in the record to find that Father committed any acts of domestic violence. Therefore, this factor is inapplicable to the Court's analysis.

***(8) The criminal history of any party or any other resident of the household including whether the criminal history contains pleas of guilty or no contest or a conviction of a criminal offense.***

The Court finds no criminal record of any import for Mother or Father. Accordingly, this factor is inapplicable to the Court's analysis.

### **CONCLUSION**

Pursuant to Title 13 *Del. C.* § 701, Mother and Father are the joint, natural guardians of their minor child and are equally charged with Child's support, care, nurture, welfare, and education. After considering all the relevant factors, the Court finds that it is in the Children's best interests that the Court grant Mother's Motion to Relocate and Mother's Petition to Modify Father's visitation. Factors one (1), two (2), three (3), four (4), five (5), and six (6) favor granting Mother's Petition, whereas factors seven (7) and eight (8) are inapplicable to the Court's analysis.

The Court finds that Father's relationship with his Children is severally damaged due to his failure to effectuate visitation or timely engage in family therapy. Although Father claims that Mother blocked his attempts at therapy due to her objection to Dr. N-----'s methods, the record reflects that Father waited over a year to begin to engage in family therapy after the Court's prior Order directing him to do so. The Court finds that Mother did not arbitrarily object to Dr. N-----'s methods, as her objection was based on insight from the Children's therapist. The Court also finds that Mother did not block Father's attempts to visit the Children; the record shows that Father failed to visit the Children on any of the weekends afforded to him. Therefore, the Court's reduction of Father's visitation would not alter to current status since Father has chosen not to effectuate visitation with the Children.

Additionally, the Court finds that the relocation to Michigan would be in the Children's



best interests. There is a strong social support network available to the family in Michigan that is lacking in Delaware. Mother has investigated the schools and community where the Children would attend and live and notes that the schools are rated highly. Additionally, Mother's job prospects and the family's cost of living would afford the family financial benefits not available to them in Delaware. Accordingly, the Court finds that the move would be in the Children's best interests.

Nonetheless, the Children's relationship with their Father must continue to be addressed. The lack of a relationship with their Father is damaging to the Children, and both Mother and Father shall work towards reunifying the Children with their Father for the benefit of their emotional wellbeing. Although a move to Michigan makes this process more difficult, it is not impossible. Ms. W---- noted that family counseling could occur by video conferencing, Skype, or telephone. The Court finds that the family should engage in family therapy as soon as possible in order to immediately begin improving and strengthening the Children's relationship with their Father prior to their move.

Mother noted that, should the Court grant Mother's Motion, the family would not relocate until the end of the school year. Accordingly, the Court finds the parties have six (6) months time to work towards family counseling before Mother and Children move. Additionally, once the move occurs, counseling can continue by video conferencing. Ideally, once Father and the Children have engaged in family counseling for a period of time, the Children would become more comfortable with their Father and would be willing and eager to come back to Delaware to visit their Father on school holidays and in the summer. Mother shall encourage the Children to have a relationship with their Father because it is in the Children's best interest to have a strong relationship with both parents.

The Court reminds the parties that each parent is entitled by statute to have reasonable access to Child by telephone, mail, and other means of communication and to receive all material information concerning Child, regardless of the custodial or residential arrangement.<sup>2</sup> Additionally, each party shall foster a feeling of affection and respect between Child and the other parent.

**ACCORDINGLY, IT IS HEREBY ORDERED AS FOLLOWS:**

1. Mother, T—B-----, and Father, K--- L-----, shall have joint legal custody of Children L----- B----- born -----, 2003, L---- B----- born ---- -, 2005, and W--- B----- born ---- -, 2008, with Mother having final decision making authority and primary residential placement and Father having visitation as outlined below.
2. Mother's Motion for Relocation is hereby **GRANTED**.
3. **Family Counseling:** Within fifteen (15) days of this Order, Father shall give Mother the names of a family therapist at N----- B----- & Associates who is able to engage the family in therapy. The therapist shall not be Father's individual therapist. The therapist should also be willing to engage in therapeutic treatment via video conferencing in order to effectuate the continuation of the treatment after the family's move to Michigan. Within five (5) days of receiving this name, Mother shall contact the therapist and schedule an appointment to begin to effectuate the reunification process. The purpose of therapy will be to re-establish Father's relationship with the Children.

Once the family moves to Michigan and if the therapist feels it is necessary, Father and the Children shall continue to engage in family therapy using video conferencing methods.

4. **Visitation:** Father's visitation with the Children shall be limited to a therapeutic setting at the present time in order to allow the therapy to progress. Once the family therapist agrees that it is in the Children's best interests that Father be afforded visitation, Father shall have visitation with the Children every other Saturday from 9 a.m. to 6 p.m. If those visits are consistently successful for three (3) months and if the therapist agrees, Father shall be afforded every other weekend with the Children from Saturday at 9 a.m. to

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<sup>2</sup> See 13 Del. C. § 727(a):

Whether the parents have joint legal custody or 1 parent has sole legal custody of a child, each parent has the right to receive, on request, from the other parent, whenever practicable in advance, all material information concerning the child's progress in school, medical treatment, significant developments in the child's life, and school activities and conferences, special religious events and other activities in which parents may wish to participate and each parent and child has a right to reasonable access to the other by telephone or mail. The Court shall not restrict the rights of a child or a parent under this subsection unless it finds, after a hearing, that the exercise of such rights would endanger a child's physical health or significantly impair his or her emotional development.

Sunday at 6 p.m.

Once the Children move to Michigan, and if the therapist agrees, Father shall be afforded visitation with the Children twice a year. Father shall be afforded two (2) consecutive weeks in the summer. Father shall inform Mother of the weeks of his choosing by April 1 of each year. Father shall attempt to note the Children's summer activities and work around their summer schedule.

If the therapist agrees, Father shall also be afforded the Children's winter break from school. In even years, this will begin on December 26 and end on January 2. In odd years, this will begin on the day after the Children's last day of school and ending on the day before the Children return from school. This will allow the Children to spend Christmas Eve and Christmas Day with their Mother on even years and with Father on odd years.

If Father chooses, and the therapist agrees, he may also visit the Children in Michigan. On such visits, Father shall notify Mother at least two (2) weeks in advance. Father shall note the Children's school and activity schedules on these visits.

Father's visitation is contingent on the therapist's agreement that visitation is in the best interest of the Children and Father's continued compliance with family therapy.

5. ***Transportation:*** The cost of transportation for the Children to visit with their Father in Delaware shall be shared equally by the parties.
6. ***Parental Communication:*** The parties shall communicate directly with one another regarding the well-being of Child, whether by telephone, text, or email. Mother shall diligently keep Father informed about the Children's health and wellbeing so that Father is given an opportunity to meaningfully participate in their lives.
7. ***Telephone Access:*** Father shall be entitled to reasonably frequent telephone and electronic communication with the Children.
8. The parties may modify the visitation/holiday schedule by mutual agreement in writing.

**IT IS SO ORDERED.**

December 20, 2016  
**Date Written Order Issued**

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**ROBERT BURTON COONIN, JUDGE**

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cc: File